

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 16531 of 2007(R)

ID.46/2003 of LABOUR COURT, KOLLAM

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PETITIONER:

THE SECRETARY, TRIVANDRUM CLUB,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

1. C.SOBHANA, CHARUVALLY KONATHU
KUNNUMPURATHU VEEDU, VANDA, KARIPUR,
NEDUMANGADU, THIRUVANANTHAPURAM.
2. THE LABOUR COURT, KOLLAM.
3. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, LABOUR & REHABILITATION (A)
DEPARTMENT, THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04/06/2007, THE COURT ON 08/06/2007 DELIVERED THE
FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.16531 of 2007

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Dated this the 8th day of June, 2007

J U D G M E N T

The petitioner is the management in I.D.No.46/2003 before the Labour Court, Kollam. He is challenging Ext.P4 award of the Labour Court in that I.D. The issue referred for adjudication was:

"Whether there is any justification in the denial of employment to Smt.C.Sobhana, if not relief entitled to her"

2. The contention of the workman was that she was employed as a sweeper in the management from 1.6.1996 onwards on a monthly salary of Rs.1637/-. While she was so working she was denied employment from 1st February, 2000 onwards without any justification. It was contended by the workman that all the employees of the establishment were members of the C.I.T.U. and on 2.11.1999 the union called a strike to protest against the dismissal of two employees belonging to their union and on account

of the strike, the workman could not also attend duty. After three months, the management allowed the employees to join duty. However, when the workman approached the Secretary in February, 2000, she was denied employment.

3. The management raised several contentions of which what was mainly pressed into service was that the workman voluntarily abandoned the service of the club seeking another job and the management never terminated the workman from service and denied employment to her. They admitted that when the strike was withdrawn as per the agreement reached with the union, the management permitted the remaining workers to join duty. But the workman involved in the dispute did not report for duty after the strike and she never raised any claim before the management. The management therefore took the stand that there was no denial of employment.

4. After evidence was over, relying on a statement of the workman while giving evidence that

she was dismissed from service, the management raised another contention that what was referred for adjudication was the issue regarding denial of employment and since the workman's case was that she was dismissed from service, the question of adjudication of the issue of denial of employment does not arise.

5. However, the Labour Court on the evidence before it came to the conclusion that all along the consistent and definite case of the workman was that she was denied employment and even if there was some discrepancy while giving evidence, that cannot prevent the Labour Court from adjudicating the real issue referred to it, viz., denial of employment. The Labour Court found that the workman was actually denied employment from February 2000 onwards and that the management was not successful in proving abandonment of work by the workman. Accordingly, the Labour Court directed the petitioner-management to reinstate the workman with backwages and attendant benefits from 1.2.2000

onwards holding that the denial of employment to the workman by the management is unjustifiable.

6. In this writ petition also, the management raises the very same two contentions. First is that since the issue referred for adjudication is denial of employment and while giving evidence, the workman's case was that she was dismissed from service, the Labour Court cannot go behind the issue referred for adjudication. Therefore, according to them, once the workman admitted that she was dismissed from service, the issue referred for adjudication viz., justifiability of denial of employment, no longer survives for consideration and as such, the Labour Court ought to have rejected the contentions of the workman. They also contended that the strike was in 1998 and the strike ended in February, 1999 and the workman raised the dispute only in November, 2001 after a long period of three years. Therefore, the contention of the management that the petitioner abandoned employment was more probable than the

case of the workman that she was denied employment and even assuming that her case is that she was denied employment. In view of the said circumstances, the workman was not entitled to any relief in the industrial dispute.

7. I have heard the learned counsel for the petitioner in detail.

8. Regarding the first question, first of all I must observe that admittedly the issue referred for adjudication was denial of employment and the Labour Court has found only that the workman was actually denied employment. Therefore, there is no question of the Labour Court having travelled beyond the scope of the issue referred for adjudication. Simply because while giving evidence the workman stated that (even assuming the same to be true) she was dismissed from service, that does not in any way change the scope of reference or the jurisdiction of the Labour Court to decide the issue referred to it for adjudication on the basis of the evidence before it. In this connection it

must also be remembered that the workman is not an educated lady, but only a lady of the lower strata of society working only as a sweeper. For her there may not be any much difference between denial of employment and dismissal from service. In this connection I had in my judgment in O.P.No.38385/2002 considered the opposite question as to whether, when the issue referred for adjudication was denial of employment, the Labour Court could have adjudicated the issue of dismissal of the workman. In that decision, in paragraph 11, I had held thus:

"11. Apart from that, I am of opinion that when the issue referred for adjudication is denial of employment, it cannot be said that it would not take in dismissal of the workman as well. Of course, nobody can now dispute the proposition of law that the Labour Court/Industrial Tribunal cannot go behind the issue referred for adjudication or enlarge the scope of reference, since that proposition is so well settled by decisions of the Supreme Court as in the case of Om Prakash Sharma's case cited by the petitioner. But, here the question is whether when considering the issue 'denial of employment', the Tribunal was justified in adjudicating the issue of dismissal of the workmen. According to me, the Tribunal was justified in adjudicating that issue since from the pleadings before it, there could not be any doubt that the only dispute between the parties was dismissal of the workmen. The wording used in the reference order itself may not be conclusive in deciding that. "Denial of employment" is the genus of which

"dismissal" is a specie. The genus of "denial of employment" takes in many species such as "dismissal", "termination of service", "retrenchment", "discharge" etc. If the parties have joined issue at the time of raising of the industrial dispute itself on the question of dismissal of the workmen concerned, and no other dispute was ever in the contemplation of the parties at any time, just because the Government referred the issue in the general term "denial of employment", the Tribunal would not either be travelling beyond the issue referred or enlarging the scope of reference since the Tribunal was only adjudicating the real issue between the parties which was nothing, but dismissal of the workmen, about which, as is evident from Ext.P5 written statement of the management there was no doubt whatsoever.

9. My observations regarding the nuances of the meaning of the words "denial of employment and dismissal" squarely apply to the present case. Moreover, the management also does not have any case that the workman was dismissed from service. Even otherwise, when on the basis of the evidence before it, the Labour Court comes to the conclusion that the workman was actually denied employment, I do not think that the decision can be faulted simply because while giving evidence the workman referred to the same as dismissal. In the above circumstances, I do not find any merit in the contentions of the petitioner on the first

question.

10. Regarding the second question as to whether there was denial of employment or whether the workman abandoned employment I find that the Labour Court had elaborately discussed the evidence before it and had come to the conclusion that the management did not succeed in proving that the workman actually abandoned employment. The Labour Court disbelieved the contention of the petitioner-management that the strike was in 1998 and the same ended in February, 1999. On the other hand, the Labour Court found that the strike was actually in November, 1999 and the same ended in February, 2000. Further, the management examined only one witness who was only a clerk of the management in 1999. The management did not adduce any documentary evidence except an undated notice allegedly published by Advocate K.S.Gopinathan Nair. As between the evidence of the workman on the one hand and the management on the other, the evidence of the workman has found favour with the Labour Court.

On a reading of Ext.P4 award, I could not find any perversity in the assessment of evidence and the conclusion reached by the Labour Court on the basis of that evidence. It is settled law that as far as the conclusions on evidence are concerned, the jurisdiction of this court, in the matter of interfering with the awards of the Labour Courts and Industrial Tribunals, is limited to the extent of examining whether such conclusions are demonstrably perverse. On a consideration of Ext.P4 award, by no stretch of imagination, can the conclusions arrived at by the Labour Court be said to be demonstrably perverse. In view of the above findings, I do not find any merit in the writ petition and accordingly the same is dismissed.

sd/-
S.SIRI JAGAN, JUDGE
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P.A. to Judge.

